

CAUSE NO. **CL-15-3048-B**

MONICA SALINAS,

Plaintiff,

VS.

ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY,*Defendant.*

§ IN THE COUNTY COURT

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§

§ AT LAW NO. __

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§ HIDALGO COUNTY, TEXAS

**PLAINTIFF'S ORIGINAL PETITION, BINDING STIPULATION, DEMAND FOR
JURY TRIAL, REQUESTS FOR DISCLOSURE, FIRST SET OF INTERROGATORIES
AND FIRST SET OF REQUESTS FOR PRODUCTION**

COMES NOW, Plaintiff MONICA SALINAS (hereinafter sometimes referred to as "Plaintiff"), complaining of ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, Defendant herein, and files this Plaintiff's Original Petition, and for cause of action would respectfully show as follows:

I.

DISCOVERY CONTROL PLAN LEVEL

Plaintiff intends to conduct discovery under Rules 169 and 190.2 of the Texas Rules of Civil Procedure.

II.

TRCP 47 STATEMENT

Plaintiff seeks monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees.

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III.

BINDING STIPULATION

Plaintiff stipulates that she will not seek more than \$75,000.00 in damages of any kind, including penalties, costs, expenses, and attorney fees.

IV.

PARTIES AND SERVICE

Plaintiff MONICA SALINAS is an individual who is a resident of Hidalgo County, Texas.

Defendant ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY (hereinafter sometimes "Allstate") is a foreign insurance company authorized to do business in the State of Texas. Service of process may be effectuated by delivering a true and correct copy of the citation with a copy of the petition attached thereto via certified mail, restricted delivery, return receipt requested to its Attorney for Service, C.T. Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136. **Service of Citation is requested at this time.**

V.

VENUE AND JURISDICTION

The subject matter in controversy is within the jurisdictional limits of this court.

This court has jurisdiction over the parties because all parties are Texas residents.

Venue in Hidalgo County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county and the Plaintiff/policyholder resided in Hidalgo County, Texas at the time of the loss.

CL-15-3048-B**VI.****FACTS**

On or about August 13, 2014, Plaintiff's home at 901 Comino Street, Pharr, Texas was badly damaged by a wind storm. At the time of the loss, Plaintiff's home and contents were insured by a policy of insurance by Defendant ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY. The policy number is 829-657-537. All lawful terms of the insurance policy are plead and incorporated in by reference.

On or about August 13, 2014, , Plaintiff reported the loss and filed a claim with Defendant. The claim number is 0338345721.

Thereafter, an inspection was made by Defendant. Based on that inspection, Defendant denied Plaintiff's claim.

Thereafter, Plaintiff sought a second opinion as to the damage to her home. An independent company inspected the premises and concluded there was wind and hail storm damage to the interior and exterior of the home in the amount of \$32,621.41.

VII.**ACTION FOR BENEFITS UNDER THE POLICY**

Plaintiff has complied with all conditions precedent to bringing an action for benefits under the policy issued by Defendant, yet Defendant has failed to make a reasonable effort to resolve his claim.

VIII.**INSURANCE CODE VIOLATIONS**

In violation of Chapter 541 of the Texas Insurance Code, Defendant has knowingly and intentionally engaged in unfair settlement practices with respect to this claim including, but not

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limited to, failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which the insurer's liability has become reasonably clear; and refusing to pay a claim without conducting a reasonable investigation with respect to the claim.

Further, Defendant violated Chapter 542 by requiring Plaintiff to institute this suit because of the denial of the claim.

IX.

DAMAGES

Plaintiff claims damages to the exterior of her home in the amount of \$32,621.41.

Plaintiff's claims do not exceed \$75,000.00.

Attorney Fees. Plaintiff claims actual attorney fees pursuant to Chapter 541 of the Texas Insurance Code.

X.

JURY DEMAND

Plaintiff demands a trial by jury in connection with her claims against Defendant and has paid the jury fees at the time of filing Plaintiff's Original Petition.

XI.

REQUEST FOR DISCLOSURE

Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2(a)-(k).

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XII.

INTERROGATORIES TO DEFENDANT

Plaintiff, pursuant to Tex. R. Civ. Procedure 196 and 197, propounds the following Interrogatories to Defendant. Defendant's response is due within fifty (50) days from the date of service thereof. Plaintiff also requests that Defendant continue to supplement Defendant's responses to these Interrogatories as provided for by the Rules.

Interrogatory 1: Identify each person answering these interrogatories, supplying information, or assisting in any way with the preparation of the answers to these interrogatories and the responses to the requests for production.

RESPONSE:

Interrogatory 2: Describe each separate file containing records, documents, or information relating to Plaintiff's claims or Plaintiff. Include in your description for each file: name, number, descriptive title, custodian, contents and location.

RESPONSE:

Interrogatory 3: Identify by name, employer (if different from defendant), business address, job title and telephone number of the individual who will be Defendant's in-court representative.

RESPONSE:

Interrogatory 4: Identify by name, employer, business address, job title and telephone number and role of each of Defendant's employees, agents, representative, adjusters, independent adjusters, independent adjusting firms, consultants and any entity or individual acting under any oral or written agreement, who performed any claims work, participated in the evaluation of Plaintiff's claim, and/or claims services of any type or nature, with respect to the insurance claims involved in this litigation. Your answer should also include, but not be limited to, the identity of all of your employees who evaluated Plaintiff's claim, authorized settlement offers to be made to

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and/or made decisions regarding any adjuster's authority to settle Plaintiff's claim relating to underinsured coverage provided to Plaintiff.

RESPONSE:

Interrogatory 5: In accordance with TRCP 194.2(d) And 192.3(a), if you contest any of the damages claimed by Plaintiff under TRCP 192.4(d), please state, FOR EACH CATEGORY OF DAMAGES, the category of damages being contested, the amount for each category being contested, the reason the amount for each category is being contested, what you contend the correct dollar amount of damages for each category should be, and the method of calculating what you contend to be the correct dollar amount of damages.

RESPONSE:

Interrogatory 6: State each and every factor which you now contend or will contend at trial caused or contributed to the Plaintiff's damages.

RESPONSE:

Interrogatory 7: State the procedures relied upon and the criteria utilized by Defendant in its investigation of Plaintiff's claim to evaluate and place a dollar value on her claim.

RESPONSE:

Interrogatory 8: Please list, describe and identify all documents that support any and all:

- (a) condition(s) precedent to bringing this lawsuit against you that Plaintiff has not met; and
- (b) any terms and conditions of the insurance agreement with which Plaintiff did not comply.

RESPONSE:

Interrogatory 9: Identify any recorded statements and/or examinations under oath that have been taken by Defendant or taken on Defendant's behalf, relating to this litigation or the claim which forms the basis of this lawsuit, including statements from any party or witness, and do the following:

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- (a) Identify the person who gave or made the statement.
- (b) Specify the date when the statement was taken.
- (c) Identify the person who took the statement.
- (d) State whether the statement was recorded, regardless of medium (e.g., paper or electronic), and if so, identify the material.
- (e) State whether defendant will, without a formal request to produce, attach a copy of all statements described in the answer to this interrogatory.

RESPONSE:**XIII.****REQUESTS FOR PRODUCTION TO DEFENDANT**

Pursuant to Rule 196, Texas Rules of Civil Procedure, Plaintiff requests that, within the time prescribed by law, Defendant produce and permit Plaintiff to inspect and copy the documents and things described in the requests below, and as instructed below. Plaintiff requests that Defendant produce the documents at MACIAS LAW FIRM, 515 W. Pecan, McAllen, Texas 78501.

- 1. Any and all pictures, drawings, photographs, motion pictures, drawings, charts, diagrams, measurements, videotapes or other documents concerning the events and happenings made the basis of this lawsuit.

RESPONSE:

- 2. A copy of the entire claims file and/or adjuster logs, including but not limited to, photographs, notes, memorandums, tables, computer generated information and other written documents contained therein, which were generated in connection with the damage to Plaintiff that forms the basis of the above-captioned lawsuit.

RESPONSE:

- 3. Provide complete and unaltered copies of correspondence, memoranda, reports, e-mails, facsimile transmissions, and all other documents evidencing communications between

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Defendant and its: 1) adjusters; 2) employees; 3) officers; 4) agents; 5) representatives; 6) independent adjusters; and/or 7) independent adjusting firms, that relate or pertain to the insurance claim(s) involved in this litigation.

RESPONSE:

4. Investigative reports relating to the claim in question, including documents, memoranda, photographs, videotapes, movies, statements, reports, drawings, communications, and tangible things attached to such reports, or referred to therein, which were generated or obtained by or on behalf of the Defendant before a reasonable person would have concluded from the circumstances that there was a substantial chance of litigation, or which were generated or obtained by or on behalf of the Defendant in the ordinary course of business.

RESPONSE:

5. Please provide written or other documentation concerning factual observations, tests, supporting data, calculations, photographs and opinions of each consulting expert witness who will not be called to testify but whose opinions or impressions have been reviewed by an expert who may be called to testify, including but not limited to any reports prepared by or under the direction of such person, including any recording or transcripts thereof of any oral report.

RESPONSE:

6. Please produce any documents that support your contentions or responses contained in your responses to any of the interrogatories of Plaintiff's First Set of Interrogatories to Defendant.

RESPONSE:

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, that this cause be set for trial before a jury, and that Plaintiff recovers judgment of and from the Defendant for the following:

1. Damages in excess of the minimum jurisdictional limits of this court;
2. Monetary relief of \$100,000 or less, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees;

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3. Attorney fees;
4. Costs of court;
5. Pre-judgment interest at the highest allowable legal rate;
6. Post-judgment interest at the highest allowable legal rate; and
7. Such other and further relief as the court may deem proper, in law or in law and in equity.

Respectfully submitted,
MACIAS LAW FIRM
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/Carlos Macias/

By: _____

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